

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH; JAIPUR

10th Day of December, two thousand three.

O.A. No. 361/2000

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Ramji Lal Dubey,
S/o Late Shri Shankar Lal Dubey,
P/o Gangapur City (Soor Sagar)
Swai Madholpur Dist., Raj.

: Applicant.

Mr. O.P. Pareek : Counsel for the applicant.

Versus.

1. Union of India through the General Manager.
Western Railway,
Churchgate. Mumbai.
2. Divisional Railway Manager (DRM Estt.)
Western Railway, Kota.

: Respondents.

Mr. T.P. Sharma : Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik: Judicial Member.

Mr. Ramji Lal Dubey, has filed this O.A for a number of reliefs. But as per the order dated 26.08.2003, he restricted his relief to Clause 8 (B) and (C) and other reliefs which reads as under:

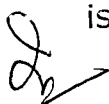
"That the respondents be directed to pay the applicant Rs. 32,800/- and rs. 924/- as interest for the delayed payments made to the applicant in matter of gratuity.



That the respondents be directed to pay the applicant commutation period benefit at the value expressed 10.46 instead of expressed value 9.48. Thus the applicant is entitled to get Ps. 6166/- plus interest 18% per annum totalling Ps. 38, 818/- from respondents.

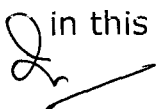
Any other appropriate order which this Hon'ble Tribunal deems just and proper in facts and circumstances of the case. "

2. The abridged facts of the case are that the applicant was appointed in the Railways in the year 1954 as Trade Apprentice. He retired from service on attaining the age of superannuation on 31.10.93, from the post of CWS after rendering 39 years unblemished service. While in service he was served with S.F.5 dated 25.05.93, for the alleged disobedience of certain instructions. The same was ultimately cancelled vide letter dated 16.10.96. It has been averred that the cancellation of the charge sheet would mean that the applicant stood exonerated and he would be entitled to all benefits and privileges pertaining to his services, as if S.F. (5) was never in existence. He made number of representations in the matter including that to the pension adalat. His retrial dues were paid to him after a lapse of three years. Similarly commutation of pension amount was paid to him on 21.12.96 on the basis of expressed value of 9.48 instead of 10.46. Had he been allowed to commute his pension on the date of his retirement he would have got the expressed value of 10.46. He was also not paid Over Time Allowance and also not given his due promotions. He was also denied certain stepping up of pay. The Original Application has been filed on a number of grounds. The O.A was subsequently amended and it is the amended O.A that is before us for adjudication.



3. The respondents have filed a detailed reply and contested the case. They have taken a preliminary objection that law of limitation as well as resjudicata hits the O.A. His retrial dues could not be paid since major penalty DAP case was pending against him which attained finality only on 16.10.96. He was immediately paid the amounts of DCPG as well as commutation value of pension. It is stated that up to the date of commutation the applicant was paid full pension and therefore the question of paying interest thereon does not arise. The respondents have submitted additional affidavit giving details about the date of disbursement of the amounts to the applicant. It has been averred that the expressed value for paying the commutation amount is 9.48 on the date of commutation.

5. We have heard the learned counsel for the parties and have anxiously considered the pleadings and records of the case. The learned counsel for the applicant has submitted that the applicant did not commit any mis-conduct and that is the reason the charge sheet was cancelled and he stood exonerated. Once the applicant has been exonerated in the disciplinary case he would become entitled to all the retrial dues as if the charge sheet for major penalty has not been in existence. He has reiterated the pleadings made on behalf of the applicant in the OA and has urged that the applicant should be paid interest on the various amount disbursed to him belatedly. He placed reliance on the Office Memoranda dated 11.07.79 and 10.01.83 in this respect.



proforma, by the retired government servant. Otherwise also, commutation of pension is not a matter of right or compulsory. Since a disciplinary case was pending against the applicant, payment of commutation was prohibited by law and keeping in view the full pension has been paid to the applicant till the date of commutation, we do not find any justification for payment of interest on the commuted value of pension or changing the expressed value of commutation. The action of the respondents on this count is fully consonance with the rules. As per rule 10 of the Railway Services (Pension) Rules, 1993, in case one is faced with disciplinary case which continued even after retirement he would get only provisional pension. The payment of commuted value of pension will be made only after the individual is exonerated in the disciplinary case. Gratuity is distinct from that of commuted value of pension. Gratuity becomes due on the date of retirement of an employee whereas, the commuted value of pension does not become so due inasmuch as one may not chose to opt for commutation of pension or the same cannot be permissible in case the medical opinion is otherwise.

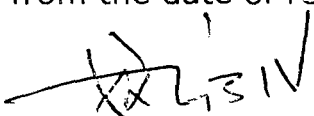
9. As regards the payment of interest on the amount of gratuity withheld by the respondents, the learned counsel for the applicant drew our attention to Office Memoranda No. F.7 (1) P.U./79 dated 11.07.79 and No. 1(4)/Pen.Unit/82 dated 10.01.83, and the relevant portion under Rule 68 of Authorisation of Pension and Gratuity reads as under :-



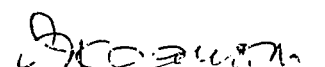
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would be entitled to the interest at a reasonable rate on the delayed payment of gratuity.

11. The upshot of the above discussion is that the O.A merits acceptance and the same stands allowed to the extent that the applicant would be entitled to interest on the gratuity amount for the delayed period i.e. from the date of retirement to the date of actual payment at the rate of 8% per annum. The interest should be paid to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.


(A.K. Bhandari)

Administrative Member


(J.K. Kaushik)

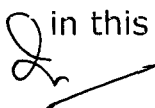
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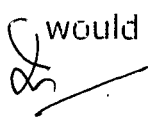
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6. On the contrary, the learned counsel for the respondent has submitted that the action as per Rule 10 of the Railway Service Pension Rules, was taken and as per the said rule the applicant would be entitled to provisional pension and the same was paid to him. The applicant became entitled to retrial dues only after he had been exonerated in the disciplinary case. Therefore the delay in making the payment of retrial dues cannot be attributable to the respondents. His exoneration was made in the year 1996 cannot dilute the situation and the respondents have released his dues immediately after his exoneration and therefore there was no fault can be found with the action of the respondents. They have been fair enough in the matter and have acted strictly in accordance with law.

7. We have considered the rival contentions raised on behalf of both the parties. At the very outset, it is admitted by both parties that till the date of actual commutation of pension, the applicant was paid full pension and also on the date of commutation the expressed value for commutation was 9.48. As the applicant has been paid full pension up to the date of commutation, there cannot be any question of paying interest on the commuted value of pension.

8. Further the commutation of pension comes into effect only when the commutation amount was paid and from that date after completion of 15 years the commuted amount of pension would be restored, on making an application in the prescribed



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proforma, by the retired government servant. Otherwise also, commutation of pension is not a matter of right or compulsory. Since a disciplinary case was pending against the applicant, payment of commutation was prohibited by law and keeping in view the full pension has been paid to the applicant till the date of commutation, we do not find any justification for payment of interest on the commuted value of pension or changing the expressed value of commutation. The action of the respondents on this count is fully consonance with the rules. As per rule 10 of the Railway Services (Pension) Rules, 1993, in case one is faced with disciplinary case which continued even after retirement he would get only provisional pension. The payment of commuted value of pension will be made only after the individual is exonerated in the disciplinary case. Gratuity is distinct from that of commuted value of pension. Gratuity becomes due on the date of retirement of an employee whereas, the commuted value of pension does not become so due inasmuch as one may not chose to opt for commutation of pension or the same cannot be permissible in case the medical opinion is otherwise.

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(Government of India's decisions)

" 3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.'

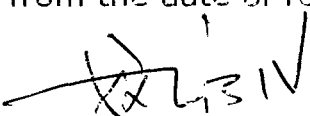
10. A bare perusal of the aforesaid portion reveals that in such cases, the due date for payment of gratuity would be the date of retirement and in this view of the matter, the applicant would be entitled to the interest and this has been provided in the very office memorandum issued by the Government of India. We have not been shown any contrary law to the said instructions and thus we have no hesitation in following the same. The inescapable conclusion would be that the applicant

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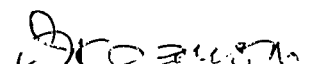
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